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FCC - MAILROOM

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Culebra, Puerto Rico)

MB Docket No. 04-318

RM No. - 11040

REQUEST FOR EXPEDITED CONSIDERATION

La Gigante Radio Corporation (“La Gigante”), permittee and operator by Special Temporary Authority (“STA”) of Station WXZX-FM (the “Station”), by its counsel, hereby submits its Request for Expedited Consideration in this proceeding. The deadline for filing Reply Comments in this docket was October 19, 2004, so it is now appropriate for the FCC to prepare and issue a *Report and Order* in this proceeding. For the reasons set forth below, La Gigante urges the FCC to expedite its preparation of the *R&O* so that it can be released before December 16, 2004, when the STA to operate the Station expires.

PROCEDURAL HISTORY

1. The construction permit for this station first issued in June 1995, and since that time, the permittee has been prohibited from filing for a license for the Station because there is no permanent channel available for which a license can be issued. The permit was initially issued on Channel 293A with a condition stating that the channel finally available for construction of the Station was contingent on the ultimate outcome of the rule making proceeding in MM Docket 91-259. The *Report and Order* in MM Docket No. 91-259¹, as affirmed on appeal and now final beyond any possible appeal, proposed a change in the Culebra allocation from Channel 293A to Channel 254A. However, the decision also held that the permittee at Culebra could not commence program test authority (and therefore not apply

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¹ 10 FCC Rcd 6673 (1995).

for a license on Channel 254A) until a series of other channel changes by different licensees were implemented. The *Report and Order* was appealed over and over until a final *Memorandum Opinion and Order* was released on June 21, 1999, which upheld all aspects of the initial *Report and Order* in MM Docket No. 91-259.

2. The channel changes and station moves proscribed in the *Report and Order* that are necessary to enable WXZX to apply for a license on a permanent channel have not been made. The licensees that have failed to abide by the decision in the *Report and Order* have suffered no consequence. Moreover, there is no sign that the FCC plans any action to enforce the implementation of the *Report and Order*. When the *Report and Order* substituting Channel 254A for Channel 293A at Culebra was issued, the Station could no longer apply for a license on Channel 293A because that channel was no longer in the FM Table of Allotments.² And it could not file for a license on Channel 254A until all of the other changes in the *Report and Order* were accomplished by the affected licensees.

3. In July 1998, more than three years after the construction permit was issued, the permittee decided the residents of Culebra had waited long enough for the inauguration of this new radio service, the first local service to Culebra, and filed for an STA to operate the station on a temporary basis until either the *Report and Order* in MM Docket No. 91-259 was implemented, or the FCC decided to revert the Culebra allotment back to Channel 293A because of a failure to implement the relevant parts of the *Report and Order*. Following vigorous prosecution by the permittee, the STA was granted on December 22, 1998. Since then, the STA has been regularly renewed and the Station has operated continuously. The operation of WXZX has always been at the pleasure of surrounding stations because even a minor modification filed by a neighboring station could result in WXZX having to sign off the air because it is a secondary, temporary service.

4. No one could have predicted that six years after the STA was first granted,

² 47 C.F.R. § 73.202(b).

WXZX would still be unable to file for a license. There is still no channel presently available for permanent authorization of the Station. The stations that were directed to move in MM Docket No. 91-259 have all gone through a renewal cycle without any mention of the unimplemented changes order in that docket.

EXPEDITED CONSIDERATION IS NECESSARY TO PRESERVE THIS CRUCIAL SERVICE

5. La Gigante uncovered a scenario that would allow WXZX to have a permanent channel and filed the Petition for Rule Making that was the genesis for this proceeding. Substituting Channel 291A for Channel 254A at Culebra as proposed by La Gigante would enable WXZX to finally become a licensed station instead of a facility that is operated by STA as a secondary service.³

6. As presently authorized, WXZX is a secondary service, with its operation vulnerable to minor modification applications filed by any licensed station. It is a tenuous existence for a station that has provided first local service to the community of Culebra for six years. Every day that WXZX is not properly licensed is another day where its continued viability is in jeopardy. Expedited consideration and grant of La Gigante's proposal would enable WXZX to obtain a permanent authorization so that it could continue to provide uninterrupted first local service to Culebra.

7. The current STA for WXZX expires on December 16, 2004. The permittee has been diligently renewing this STA every six months since 1998. Of course, if WXZX was a licensed station (as opposed to one operating under STA) the permittee would not face the expense of having to file these requests every six months. In addition, WXZX could obtain a permanent license so it would be classified as a primary service, protected from the minor modification applications of other facilities.

8. For all of these reasons, La Gigante respectfully requests expedited consideration of the matters presented in this rule making docket. There would be no prejudice

³ To facilitate this substitution, Channel 254A would have to be substituted for Channel 291B at Vieques/Isabel Segunda, Puerto Rico. The technical aspects of the proposal are discussed more fully in the comments and reply

to other parties to the proceeding, as the pleading cycle has ended, and there was no opposition to La Gigante's proposal as long as an allotment at Isabel Segunda/Vieques was retained. There were no counterproposals filed that would conflict with the proposal advanced by La Gigante in this proceeding. The public interest would be served by a prompt grant of La Gigante's proposal which would allow WXZX to obtain a license and insure its ability to continue to provide first local service to Culebra.

Respectfully submitted,

LA GIGANTE RADIO CORPORATION

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November 23, 2004

CERTIFICATE OF SERVICE

I, Scott C. Cinnamon, do certify that I have on this 23rd day of November, 2004, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Request for Expedited Consideration" to the following:

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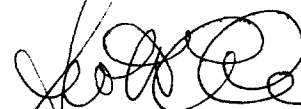
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